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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

MARY E. BARBOUR AS TRUSTEE FOR
 THE MARY E. BARBOUR FAMILY TRUST
 ONE, Derivatively On Behalf of BROCADE
 COMMUNICATIONS SYSTEMS, INC.,

Plaintiff,

vs.

GREGORY L. REYES, DAVID L. HOUSE,
 MICHAEL KLAYKO, RICHARD
 DERANLEAU, KUMAR MALAVALLI
 ANTONIO CANOVA, MICHAEL J. BYRD,
 STEPHANIE JENSEN, NEIL DEMPSEY,
 SANJAY VASWANI, L. WILLIAM
 KRAUSE, ROBERT R. WALKER, GLENN
 C. JONES, MICHAEL J. ROSE, SETH D.
 NEIMAN, NICHOLAS G. MOORE,
 CHRISTOPHER B. PAISLEY, WILLIAM
 K. O'BRIEN, LARRY SONSINI, MARK
 LESLIE, TYLER WALL, RENATO A.
 DIPENTIMA, JOHN W. GERDELMAN,
 ROBERT D. BOSSI, KPMG, LLP, WILSON
 SONSINI GOODRICH & ROSATI, P.C.
 AND DOES 1-25, inclusive,

Defendants,

-and-

BROCADE COMMUNICATIONS
 SYSTEMS, INC., a Delaware corporation,
 Nominal Defendant.

Case No. C 08-02029 CRB

(Derivative Action)

PLAINTIFF'S REQUEST FOR
 JUDICIAL NOTICE IN SUPPORT OF
 HER MOTION FOR PARTIAL
 SUMMARY JUDGMENT AGAINST
 DEFENDANT GREGORY L. REYES
 ON COUNT XIV (DECLARATORY
 RELIEF) OF PLAINTIFF'S AMENDED
 SHAREHOLDER DERIVATIVE
 COMPLAINT

Hearing Date: August 29, 2008
 Hearing Time: 10:00 a.m.

Department: Courtroom 8, 19th Floor
 Judge: Honorable Charles R. Breyer
 Date Action Filed: April 18, 2008

Plaintiff Mary E. Barbour as Trustee for the Mary E. Barbour Family Trust One ("Plaintiff"), hereby requests that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of certain documents attached to the Declaration of Francis A. Bottini, Jr. in Support of Plaintiff's Motion for Partial Summary Judgment Against Defendant Gregory L. Reyes on Count XIV (Declaratory Relief) of Plaintiff's Amended Shareholder Derivative Complaint ("Declaration") filed concurrently herewith, for the reasons set forth below.

I. TRIAL TRANSCRIPTS

A court may take judicial notice of documents that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Federal Rules of Evidence 201(b). Court proceedings are properly the subject of judicial notice. *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 814, 816 (C.D. Cal. 2004).¹ A court can take judicial notice of trial transcripts. *In re Cintas Corp. Overtime Pay Arbitration Litig.*, No. C 06-1781 SBA, 2007 WL 137149, at *2 (N.D. Cal. Jan. 12, 2007); *B.T. Produce Co. v. Robert A. Johnson Sales, Inc.*, 354 F. Supp. 2d 284, 287 n.3 (S.D.N.Y. 2004).

Accordingly, Plaintiff requests that the Court take judicial notice of the following:

- The trial transcript in the criminal trial of defendant Gregory L. Reyes ("Reyes") in the matter of *United States v. Reyes*, No. CR 06-00556 CRB, in the United States District Court, Northern District of California, San Francisco Division, attached to the Declaration as Exhibit D. Due to its voluminous nature, only the pages of the transcript cited in Plaintiff's Motion for Partial Summary Judgment Against Defendant Gregory L. Reyes on Count XIV (Declaratory Relief) of Plaintiff's Amended Shareholder Derivative Complaint ("Motion for Partial Summary Judgment") have been provided.
- The trial transcript in the matter of *In re Brocade Securities Litigation*, No. 3:05-cv-02042-CRB (N.D. Cal.), attached to the Declaration as Exhibit V.

II. SECURITIES AND EXCHANGE COMMISSION FILINGS

A court may take judicial notice of documents filed with the Securities and Exchange Commission ("SEC"). *In re CNET Networks, Inc. S'holder Derivative Litig.*, No. C 06-03817 WHA, 2008 WL 2445200, at *3 (N.D. Cal. June 16, 2008); *In re Copper Mountain Sec. Litig.*, 311 F. Supp.

¹ Here, as throughout, all emphasis is deemed added and citations and footnotes are deemed omitted unless otherwise noted.

2d 857, 865 (N.D. Cal. 2004); *In re Calpine Corp. Sec. Litig.*, 288 F. Supp. 2d 1054, 1076 (N.D. Cal. 2003). SEC filings are generally recognized as "the most accurate and authoritative source of public information about a company." *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999). There are "no serious questions as to [the] authenticity" of documents that are required to be filed with the SEC. *Oran v. Stafford*, 226 F.3d 275, 289 (3d Cir. 2000). Numerous courts have held that SEC filings are properly the subject of judicial notice. *In re MIPS Techs., Inc. Derivative Litig.*, 542 F. Supp. 2d 968, 971 n.1 (N.D. Cal. 2008).

Accordingly, Plaintiff requests that the Court take judicial notice of the following:

- Brocade Communications Systems, Inc.'s ("Brocade"), Current Report (Form 8-K) filed on January 24, 2005, attached to the Declaration as Exhibit A.
- Brocade's Amendment to its Annual Report (Form 10-K/A) filed on November 14, 2005, attached to the Declaration as Exhibit G. Due to its voluminous nature, only the pages cited in Plaintiff's Motion for Partial Summary Judgment have been provided.
- Brocade's Current Report (Form 8-K) filed on May 16, 2005, attached to the Declaration as Exhibit I.
- Brocade's Amended and Restated Bylaws, attached as Exhibit 3.2 to the Quarterly Report (Form 10-Q) dated September 13, 2004 and attached to the Declaration as Exhibit M.²
- Brocade's Restated and Amended Certificate of Incorporation, attached as Exhibit 3.1 to the Annual Report (Form 10-K) dated January 24, 2002 and attached to the Declaration as Exhibit N.³
- Brocade's Current Report (Form 8-K) filed June 2, 2008, attached to the Declaration as Exhibit X.

III. INDICTMENTS

It has been widely held that a court may take judicial notice of an indictment. *See United States v. Daychild*, 357 F.3d 1082, 1099 (9th Cir. 2004) (holding that whether indictment was

² A court may take judicial notice of a corporation's bylaws. *Omaha Tribe of Neb. v. Miller*, 311 F. Supp. 2d 816, 819 (S.D. Iowa 2004); *Daniel v. Am. Bd. of Emergency Med.*, 988 F. Supp. 127, 155 (W.D.N.Y. 1997).

³ A court may take judicial notice of a corporation's certificate of incorporation. *McCall v. Scott*, 239 F.3d 808, 814 (6th Cir. 2001); *In re Baxter Int'l, Inc. S'holders Litig.*, 654 A.2d 1268, 1270 (Del. Ch. 1995).

properly returned is a fact "capable of accurate and ready determination by resort to [a source] whose accuracy cannot be reasonably questioned." (citing Fed. R. Evid. 201(b)); *Fed. Trade Comm'n v. JK Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1199 (C.D. Cal. 2000) (court took judicial notice of defendant's indictment); *see also B.T. Produce*, 354 F. Supp. 2d at 287 n.3 (court took judicial notice of various documents from federal criminal case including indictment, plea agreement with government, and transcript of sentencing hearing because all were subject to judicial notice pursuant to Federal Rules of Evidence 201(b)).

Accordingly, Plaintiff requests that the Court take judicial notice of:

- The Indictment in the matter of *United States v. Reyes*, No. CR 06-00556 CRB, in the United States District Court, Northern District of California, San Francisco Division, filed on August 10, 2006 (Docket No. 23), attached to the Declaration as Exhibit C.

IV. RECORDS AND FILES IN RELATED MATTERS

It is appropriate for a court to take judicial notice of proceedings, records, and files in other matters, especially when they relate to a case before the court. *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); *see State of Fla. Bd. of Trustees of the Internal Improvement Trust Fund v. Charley Toppino & Sons, Inc.*, 514 F.2d 700, 704 (5th Cir. 1975) (A court may "take judicial notice of related proceedings and records in cases before that court."); *see also U.S. Fid. & Guar. Co. v. Moore*, 306 F. Supp. 1088, 1092-93 (N.D. Miss. 1969) ("it is proper, in accordance with well-established federal practice, for a federal court to take judicial notice of its own record in a prior criminal case"). A court has "the right to take notice of its own files and records and [has] no duty to grind the same corn a second time." *Aloe Creme Labs., Inc. v. Francine Co.*, 425 F.2d 1295 (5th Cir. 1970) (*per curiam*); *see also Pac. Gas & Elec. Co. v. Lynch*, 216 F. Supp. 2d 1016, 1025 (N.D. Cal. 2002); *see also In re Wet Seal, Inc. Sec. Litig.*, 518 F. Supp. 2d 1148, 1159 (C.D. Cal. 2007) ("As it is a record in the court's own file, it is the proper subject of judicial notice").

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Accordingly, Plaintiff requests that the Court take judicial notice of:

- Order Denying Defendant's Motion for a Judgment of Acquittal filed August 27, 2007 (Docket No. 582) in the matter of *United States v. Reyes*, No. CR 06-00556 CRB, in the United States District Court, Northern District of California, San Francisco Division, attached to the Declaration as Exhibit B.
- Order Denying Defendant's Motions for a New Trial and to Dismiss the Indictment filed August 29, 2007 (Docket No. 583) in the matter of *United States v. Reyes*, No. CR 06-00556 CRB, in the United States District Court, Northern District of California, San Francisco Division, attached to the Declaration as Exhibit E.
- The Verdict Form in the matter of *United States v. Reyes*, No. CR 06-00556 CRB, in the United States District Court, Northern District of California, San Francisco Division, returned and filed on August 7, 2007 (Docket No. 562), attached to the Declaration as Exhibit F.⁴
- The Amended Consolidated Class Action Complaint in *In re Brocade Securities Litigation*, No. 3:05-cv-02042-CRB, in the United States District Court, Northern District of California, filed on January 2, 2007 (Docket No. 248), attached to the Declaration as Exhibit H.
- The criminal complaint in *United States v. Reyes*, No. 3:06-cr-70450 (N.D. Cal. July 20, 2006) (Docket No. 1), attached to the Declaration as Exhibit K.
- The complaint in the matter of *Securities & Exchange Commission v. Reyes et al.*, No. 3:06-cv-04435-PVT (N.D. Cal. July 20, 2006) (Docket No. 1), attached to the Declaration as Exhibit L.
- The Declaration of AUSA Timothy P. Crudo in Support of the United States' Sentencing Memorandum including all attachments in the matter of *United States v. Reyes*, No. CR 06-00556 CRB (Docket No. 798), in the United States District Court, Northern District of California, San Francisco Division, attached to the Declaration as Exhibit O.⁵
- Reyes' Response to the United States' Sentencing Memorandum filed January 14, 2008 in the matter of *United States v. Reyes*, No. CR 06-00556 CRB, in the United States District Court, Northern District of California, San Francisco Division (Docket No. 805), attached to the Declaration as Exhibit P.

⁴ A court may take judicial notice of a verdict. *Lamke v. Sunstate Equip. Co., LLC*, 319 F. Supp. 2d 1029, 1033 (N.D. Cal. 2004) (court took judicial notice of three jury verdicts).

⁵ A court may take judicial notice of declarations and exhibits attached to declarations. *In re Copper Mountain*, 311 F. Supp. 2d at 864 (court took judicial notice of declarations and their exhibits); *see also In re LeapFrog Enters., Inc. Sec. Litig.*, 527 F. Supp. 2d 1033 (N.D. Cal. 2007) (court took judicial notice of exhibits attached to a declaration, which included press releases, earnings calls transcripts and analyst reports referenced in complaint).

- 1 • This Court's Jury Instructions in the matter of *United States v. Reyes*,
2 No. CR 06-00556 CRB, in the United States District Court, Northern
3 District of California, San Francisco Division, given on July 30, 2007
4 (Docket No. 543), attached to the Declaration as Exhibit Q.
- 5 • Judgment in the matter of *United States v. Reyes*, No. CR 06-00556
6 CRB, filed on January 17, 2008 in the United States District Court,
7 Northern District of California, San Francisco Division (Docket No.
8 813), attached to the Declaration as Exhibit R.
- 9 • APERS' Notice of Motion and Motion for Partial Summary Judgment
10 against Defendant Gregory Reyes on Elements (1-4) of Count I in
11 APERS' Amended Consolidated Class Action Complaint, and
12 Memorandum of Points and Authorities filed August 24, 2007 in the
13 matter of *In re Brocade Securities Litigation*, No. 3:05-cv-02042-
14 CRB (N.D. Cal.) (Docket No. 332), attached to the Declaration as
15 Exhibit S.
- 16 • Gregory Reyes' Opposition to APERS' Motion for Partial Summary
17 Judgment Against Defendant Gregory L. Reyes on Elements (1-4) of
18 Count I in APERS' Amended Consolidated Class Action Complaint,
19 filed September 21, 2007 in the matter of *In re Brocade Securities*
20 *Litigation*, No. 3:05-cv-02042-CRB (N.D. Cal.) (Docket No. 366),
21 attached to the Declaration as Exhibit T.
- 22 • APERS' Reply to Gregory Reyes' Opposition to APERS' Motion for
23 Partial Summary Judgment Against Defendant Gregory L. Reyes on
24 Elements (1-4) of Count I in APERS' Amended Consolidated Class
25 Action Complaint, filed September 28, 2007 in the matter of *In re*
26 *Brocade Securities Litigation*, No. 3:05-cv-02042-CRB (N.D. Cal.)
27 (Docket No. 370), attached to the Declaration as Exhibit U.
- 28 • The Court's Civil Minutes dated October 12, 2007 (Docket No. 392)
and the trial transcript in the matter of *In re Brocade Securities*
Litigation, No. 3:05-cv-02042-CRB (N.D. Cal.), attached to the
Declaration as Exhibit V.
- Order Granting Motion for Partial Summary Judgment filed May 13,
2008 in the matter of *In re Brocade Securities Litigation*, No. C 05-
02042 CRB (N.D. Cal.) (Docket No. 458), attached to the Declaration
as Exhibit W.
- Securities and Exchange Commission's Notice of Motion and Motion
for Summary Judgment against Defendants Reyes and Jensen, filed
May 9, 2008 in the matter of *Securities & Exchange Commission v.*
Reyes et al., No. C-06-04435 CRB (N.D. Cal.) (Docket No. 385),
attached to the Declaration as Exhibit Y.
- Stipulation and Order Setting Briefing and Hearing Schedule for
SEC's Motion for Summary Judgment and Defendant's Motion Under
Federal Rule of Civil Procedure 56(f), filed May 28, 2008 in the
matter of *Securities & Exchange Commission v. Reyes et al.*, No. C-
06-04435 CRB (N.D. Cal.) (Docket No. 392), attached to the
Declaration as Exhibit Z.

V. CONCLUSION

Pursuant to the foregoing authorities, Plaintiff respectfully requests that the Court take judicial notice pursuant to Rule 201 of the Federal Rules of Evidence of the documents listed above that are attached as exhibits to the Declaration of Francis A. Bottini, Jr. in Support of Plaintiff's Motion for Partial Summary Judgment Against Defendant Gregory L. Reyes on Count XIV (Declaratory Relief) of Plaintiff's Amended Shareholder Derivative Complaint, filed concurrently herewith.

Dated: July 25, 2008

Respectfully submitted,

JOHNSON BOTTINI, LLP
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/s/ Francis A. Bottini, Jr.
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